IN THE HIGH COURT OF UTTARKAHAND AT NAINITAL

Writ Petition No. 44 (S/B) of 2007

Dr. R. K. Sharma
S/o Late Sri Bal Krishan Sharma
R/o 308 Srawan Nath Nagar,
Haridwar
Presently posted as Licensing Officer
at Directorate, Ayruvedic and Unani Service,
Dehradun

……. Petitioner.

Versus

(1) State of Uttarakhand through Principal Secretary, Medical Education and Ayurvedic Unani Services Dehradun.
(2) Director General, Medical, Health and Family Welfare, Uttarakhand, Deharedun.
(3) Director, Ayurvedic and Unani Serivce, Uttarakhand, Dehradun
(4) Union of India through Secretary, Department of Personnel Public Grievances and Pension Ministry, New Delhi.
(5) Secretary, U.P. Reorganization Coordination Department, 7th Floor, Vikas Bhawan, Lucknow.
(6) The Chairman, State Advisory Committee, Gate No. 31, Jawahar Lal Nehru Stadium, Lodhi Road, New Delhi.

…….. Respondents.

Coram: Hon'ble Prafulla C.Pant,J.
Hon'ble Dharam Veer, J

[Prafulla C. Pant, J. (oral)]

By means of this writ petition, the petitioner has sought writ in the nature of mandamus commanding the respondents to allow the petition to continue in the State of Uttarakhand. He has further sought direction to respondent no. 6 to decide his representation made by him. A writ of certiorari has also been sought quashing the order dated 20th May 2005, whereby petitioner has been allowed State of Uttar Pradesh.

(2) Heard learned counsel for the parties.

(3) Brief facts of the case are the petitioner Dr. R.K. Sharma was a Licensing Officer at Director Ayurvedic and Unain Services, Dehradun. After creation of State of Uttarakhand, petitioner appears to have opted for the new State i.e. State of Uttarakhand. Under Section 73 of the U.P. Reorganization Act, 2000, power to allocate the Successor State vested with the Government of India. It appears that in exercise of the power under Section 73, the Government of India vide impugned order dated 20th May 2005 allocated petitioner the State of Uttar Pradesh. Accordingly, petitioner appears to have been relieved during the pendency of this writ petition on 02nd July 2007, as is clear from Annexure 1 to the supplementary affidavit filed by the petitioner. However, it appears that State of Uttar Pradesh did not accept

the services of the petitioner, as is evident from letter No. 4115/71-2-07-216/07T.C., dated 27th August 2007 (copy Annexure 2 to the supplementary affidavit, filed by the petitioner), wherein the Special Secretary, Government of Uttar Pradesh has written to the Principal Secretary, Medical Health and Family Welfare, Uttarakhand, that since petitioner's representation is yet to be decided by the Chairman, Advisory Committee (respondent no.6), the joining of the petitioner is not accepted in the State of Uttar Pradesh.

(4) In such circumstances, learned counsel for the petitioner argued that petitioner has been made 'Trishanku' and is neither being paid salary by State of Uttarakhand nor by State of Uttar Pradesh.

(5) Having heard learned counsel for the parties and after going through the papers on record, particularly the aforementioned two Annexures, this Court feels it just and proper to dispose of this writ petition with following direction:-

(1) Relieving dated 02nd July 2007 from State of Uttarakhand is quashed.

(2) Impugned order dated 20th May 2005, allocating the petitioner State of Uttar Pradesh, issued by Government of India, is kept in abeyance till the decision on the representation dated 21.09.2005.

(3) After decision is taken by respondent no. 4 Union of India on the recommendation of respondent no.6 on the representation, the State of Uttarakhand shall be at liberty to relieve the petitioner for the State of Uttar Pradesh, provided the allocation to the said State by the Government of India remains unaffected.

(4) In that situation the State of U.P. would be bound to accept services of the petitioner.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

01.11.2007

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